

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAY 31 2005

**U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte CORY ATTRA and MARC PRITCHARD

**Appeal No. 2005-0109
Application No. 09/497,554**

HEARD: May 5, 2005

Before HAIRSTON, LEVY, and MACDONALD, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 26. In an Amendment After Final (paper number 9), claims 12 and 13 were amended.

The disclosed invention relates to a system for providing construction services (e.g., home plans that can be modified via a computer).

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A system for providing construction services comprising:

a computer;

software executing on said computer for transmitting queries and for receiving responses to the transmitted queries;

software executing on said computer for creating a home plan based on the received responses to the transmitted queries;

software executing on said computer for performing work package calculations on the home plan to create a breakdown;

software executing on said computer for displaying details of the home plan and for receiving requests for modification of the details of the home plan;

software executing on said computer for creating a modified home plan based upon the received requests for modification; and

software executing on said computer for performing work package calculations on the modified home plan to create a modified breakdown.

The references relied on by the examiner are:

Collective Designs-Residential Design Service,
<http://web.archive.org/web/19991109130312/http://www.collectivedesigns.com/index.html>.

Choo-choo Build-It Mart,
<http://web.archive.org/web/19991111061031/http://www.choochoobuilditmart.com/>.

APmatics AutoCAD Application programs and Technical Graphics Design, May 1999.

Lowery, Managing Projects with Microsoft Project 4.0, 1994.

Claims 1 through 7, 12 through 15 and 23 through 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Collective Designs in view of APmatics.

Claims 8 through 11, 16 through 19 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Collective Designs in view of APmatics and Choo-Choo.

Claims 20 through 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Collective Designs in view of Lowery.

Reference is made to the brief (paper number 13) and the answer (paper number 14) for the respective positions of the appellants and the examiner.

OPINION

We have carefully considered the entire record before us, and we will sustain the obviousness rejection of claims 1 through 19 and 23 through 26, and reverse the obviousness rejection of claims 20 through 22.

We agree with the examiner's findings (answer, pages 4 and 5) that Collective Designs discloses all of the system elements of claims 1 and 12 with the exception of "modifying the drawings on a computer." We additionally agree with the examiner's finding (answer, pages 5 and 6) that APmatics teaches (page 1) that computer drafting results in the simplification of routine and cumbersome tasks, savings of time, reduced fatigue, and improved productivity. Thus, we agree with the examiner's conclusion (answer, page 6) that "it would have been obvious to a person with ordinary skill in the art to modify CollectiveDesigns as taught by APmatics and use [a] computer . . . to create or modify drawings of CollectiveDesigns to simplify the drawing process, save cost etc."

Appellants' argument (brief, page 7) that APmatics does not disclose, teach or suggest software that creates home plans in response to user input is without merit since Collective Designs was relied on for such a teaching. In response to appellants' argument (brief, page 8) that the home plans sent to the user are not created in response to the search criteria, we find that the home plans in Collective Designs are "created" to the extent that file records are scanned, that an electronic version of a home plan is put together and that such an electronic record is then sent to the user. The home plans in Collective Designs are thereafter customized with the user's suggested modifications (brief, page 8). Appellants' arguments (brief, pages 8 and 9) concerning a "breakdown of all components to design and construct a home" are not commensurate in scope with the invention set forth in claims 1 and 12. Claim 1 merely broadly claims a "breakdown" without any specifics as to what the breakdown encompasses. Appellants' argument (brief, page 12) that "it would be extremely difficult, if not impossible, for the modifications to be automatically carried out by software" is without merit in light of the express suggestion in the applied prior art.

In view of the foregoing, the obviousness rejection of claims 1 and 12 is sustained. The obviousness rejection of claims 2 through 11 and 13 through 19 is sustained because appellants have not presented any patentability arguments for these claims.

Turning to claim 23, appellants argue (brief, page 14) that "there would be no motivation to modify the prior art to incorporate a database to allow home plans created by

the system to be easily and automatically recalled and/or modified during remodeling or reconstruction." Appellants' argument to the contrary notwithstanding, the skilled artisan is presumed to possess the skill to appreciate that the computer in the modified teachings of Collective Designs would keep records of home plans and sales for repair or repeat business. After all, the skilled artisan is presumed to possess skill, and not stupidity. In re Sovish, 769 F.2d 738, , 226 USPQ 771, 774 (Fed. Cir. 1985). Accordingly, the obviousness rejection of claim 23 is sustained. The obviousness rejection of claims 24 through 26 is sustained because appellants have not presented any patentability arguments for these claims.

Turning lastly to claims 20 through 22, we agree with the appellants' arguments (brief, pages 15 through 17) that neither Collective Designs nor Lowery is concerned with software that periodically examines a construction plan to determine if a construction step is ready to occur, and that performs a certain task if a construction step is ready to occur. In summary, the obviousness rejection of claims 20 through 22 is reversed.

DECISION

The decision of the examiner rejecting claims 1 through 26 under 35 U.S.C. § 103(a) is affirmed as to claims 1 through 19 and 23 through 26, and is reversed as to claims 20 through 22.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART



KENNETH W. HAIRSTON
Administrative Patent Judge



STUART S. LEVY
Administrative Patent Judge

)
)
)
)
)
)
)
)
BOARD OF PATENT



ALLEN R. MACDONALD
Administrative Patent Judge

)
)
)
)
)
)
)
APPEALS
AND
INTERFERENCES

Appeal No. 2005-0109
Application No. 09/497,554

Page 7

WESLEY W. WHITMYER JR.
ST. ONGE STEWARD JOHNSTON & REENS LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619